IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6655 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
NARMADASHANKER G JOSHI - Respondent(s)

==========

Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 10/04/2006

ORAL JUDGMENT

1. By filing this petition, the petitioner has prayed for quashing and setting aside the judgment and award delivered by the Labour Court, Bhavnagar in Reference (LCB) No.182 of 1987, by which the Labour

Court has directed the petitioner – Corporation to reinstate the respondent – workman on his original post with continuity of service and that the Labour Court has also granted back wages for the intervening period.

2. Heard Mr.H.C.Raval, learned advocate appearing for the petitioner – Corporation and Mr.Mukesh H Rathod, learned advocate for the respondent – workman.

3. At the hearing, it is submitted by Mr.Raval that the respondent – workman has already been reinstated in service and, therefore, now the question which remains to be decided by this Court is with regard to back wages granted by the Labour Court vide impugned judgment and award. It is further submitted by Mr.Raval that there cannot be straight jacket formula for granting the back wages in favour of the concerned workman and admittedly in the present case, the Labour Court has not taken into consideration the relevant factors while granting the back wages. It is, therefore, requested that the respondent – workman is not entitled for any back wages as has been granted by the Labour Court in view of the fact that the Labour Court has awarded the back wages only on the presumption.

4. On the other hand, Mr.Rathod has tried to

support the impugned judgment and award on merits and submitted that this Court may not interfere with the impugned judgment and award in a petition under Article 227 of the Constitution of India. He further submitted that this Court vide order dated 20.9.1991 had directed the petitioner – Corporation to deposit 30% of the back wages as awarded by the Labour Court and ad-interim stay of back wages to the extent of 70% has been granted. It is, therefore, requested to dismiss the petition.

5. It is true that there cannot be straight jacket formula while granting the back wages for the intervening period in favour of the concerned workman and while granting the back wages for the intervening period, the Labour Court is required to take into consideration the relevant factors for granting such benefits. It is required to be noted here that the Labour Court has granted back wages for the intervening period only on assumption and has not taken into consideration the relevant factors.

6. It may be noted that this Court vide order dated 20.9.1991 directed the petitioner – Corporation to deposit 30% of back wages as awarded by the Labour Court within four weeks from 20.9.1991 and granted ad-interim stay of back wages to the extent of 70%. Further, it can be seen from the record that while on duty the respondent – workman was plying the bus from

Gundrana to Mahua and the said bus was collided with a passing train at the unmanned crossing resulting in damage to the bus to the extent of Rs.50,000/- and causing death of one passenger and injuries to 14 others. The respondent was also found guilty by the criminal Court and has been sentenced to one year rigorous imprisonment and a fine of Rs.50/-. In that view of the matter, I am of the considered opinion that the respondent – workman is not entitled to 70% back wages but the respondent – workman is at liberty to withdraw 30% back wages as has been deposited by the petitioner – Corporation pursuant to the order of this Court dated 20.9.1991. However, interest of justice would be served if the respondent – workman is awarded with the punishment of withholding of three increments without future effect.

6. In the result, this petition is partly allowed. The respondent – workman is not entitled to 70% back wages but the respondent – workman is at liberty to withdraw 30% back wages as has been deposited by the petitioner – Corporation pursuant to the order of this Court dated 20.9.1991. The petitioner – Corporation is directed to withhold three increments of the respondent – workman without future effect. Rule is made absolute to the aforesaid extent. No costs.

(SHARAD D DAVE, J)

pathan